

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Ali Al-Maqablh,	:	
	:	Case No. 1:11-cv-531
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
University of Cincinnati College of	:	
Medicine, <u>et al.</u> ,	:	
	:	
Defendants.	:	

**ORDER**

This matter is before the Court on Plaintiff Ali Al-Maqablh's motion to reopen case and establish grounds for appeal (Doc. No. 93), Magistrate Judge Bowman's Report and Recommendation recommending that Plaintiff's motion be denied (Doc. No. 96) and Plaintiff's objections to that Report and Recommendation (Doc. No. 102).

This case has a tortured procedural history, principally because certified mail sent by the Court to Plaintiff's address of record, which has not changed since the inception of this case, consistently is returned by the Postal Service unclaimed. The Court documented these problems in adopting Judge Bowman's recommendation that Defendants' motion for summary judgment be granted. Doc. No. 91. The Court also commented on Plaintiff's failure to keep himself apprised of the status of this case. Id. Plaintiff nevertheless continues to insist that he has kept apprised of the status of the case by speaking to staff members in the Clerk of Court's office, who allegedly admit to him that orders of the Court have not been mailed to him.

So it is in the pleadings now before the Court. As the Court understands

Plaintiff's motion to reopen, he did not receive a copy of the Court's order granting Defendants' motion for summary judgment and, therefore, seeks an extension of time to file a notice of appeal. Plaintiff may also be arguing that he is entitled to an extension of time to file objections to the recommendation that Defendants' motion for summary judgment be granted. Judge Bowman's latest report found that Plaintiff's assertions that he did not receive the Court's order granting the motion for summary judgment as not establishing grounds for relief under Rule 60(b).

To the extent that Plaintiff seeks an extension of time to file objections to Judge Bowman's recommendation that Defendants' motion for summary judgment be granted, his motion is not well-taken. As indicated, the Court's order adopting that report (Doc. No. 91) showed that Plaintiff already received a two-month extension to file objections to the report and failed to submit them to the Court within the time allowed. The Court also showed that certified mail was sent to Plaintiff and returned unclaimed and that he otherwise failed to keep himself apprised of the status of the case. Plaintiff is not entitled to yet another opportunity to object to that report.

To the extent that Plaintiff seeks leave to file a notice of appeal out of time, the Court will grant that motion. Rule 4(a)(6) of the Federal Rules of Appellate Procedure permits the district court to re-open the time to file a notice of appeal if:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6). In this case, with regard to subsection A, Plaintiff's assertion that he did not receive a copy of the Court's order adopting the report and granting judgment for Defendants is dubious in the light of the case history. On the other hand, unlike other entries, there is no indication that this order was sent to Plaintiff by certified mail. Accordingly, the Court will credit Plaintiff's assertion that he did not receive notice of this entry within 21 days of its entry. Regarding subsection B, Plaintiff filed his motion within 180 days after the judgment was entered. Defendants do not assert that that they would be prejudiced if Plaintiff is granted leave to file a notice of appeal out of time.

Accordingly, to the extent that Plaintiff moves to re-open the time to file a notice of appeal, his motion is well-taken is **GRANTED**. In accordance with Fed. R. App. 4(a)(6), Plaintiff must file his notice of appeal within fourteen (14) days of the date of this order. **NO FURTHER EXTENSIONS WILL BE GRANTED**. The Clerk of Court is directed to send Plaintiff a copy of this order by certified mail, return receipt requested. Otherwise, Plaintiff's objections to Magistrate Judge Bowman's Report and Recommendation are not well-taken and are **OVERRULED**. The Court **ADOPTS** the Report and Recommendation to the extent it is not inconsistent with granting Plaintiff an extension to file a notice of appeal from the Court's judgment.

**IT IS SO ORDERED**

Date October 23, 2014

s/Sandra S. Beckwith  
Sandra S. Beckwith  
Senior United States District Judge